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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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### **REGULAR MEETING AGENDA**

### **TUESDAY, OCTOBER 12, 2010, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

**The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.**

*(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)*

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the September 2010 Regular Meeting (*Attachment A*)

#### **3. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### **4. NEW BUSINESS**

- a) NACOLE Report
- b) SDSO Representative in Closed Session Meetings

#### **5. UNFINISHED BUSINESS**

- a) N/A

## 6. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

## 7. CLOSED SESSION

- a) **Officer Discipline Recommendation** - Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation.
  - **09-126 / Evans:** (Sustained – Deputy 1)
- b) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## CASES FOR SUMMARY HEARING (6)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 09-093

1. False Arrest – Deputy 1 issued the complainant a traffic citation for an illegal U-turn that is in conflict with a DMV (Department of Motor Vehicles) Handbook.

Recommended Finding: Action Justified

Rationale: Deputy 1 issued a citation to Mr. Martinez for making an improper left /U-turn that was initiated from a lane position deemed to be unsafe. The complainant's U-turn started from the right side in the number 2 lane in violation of the California Vehicle Code and the Department of Motor Vehicle's Handbook. The Department of Motor Vehicle Handbook, to which the complainant referred in support of his position, states that, in order to make a legal U-turn, the driver must signal and use the far left lane or the center left turn lane. Deputy 1's actions then were lawful, justified and proper.

2. Criminal Conduct – Deputy 1 disobeyed the very law the complainant was cited for and made a U-turn across three lanes of traffic with no emergency signals.

Recommended Finding: Not Sustained

Rationale: There are conflicting accounts as to the specific location and execution of Deputy 1's U-turn and its corresponding legality. In the absence of witnesses or video surveillance, there is no way to determine which account is true and therefore, there is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 made a mistake writing the citation, delaying the complainant's court appearance.

Recommended Finding: Action Justified

Rationale: Deputy 1 issued a traffic citation citing a California Vehicle Code Section with a conflicting description. Deputy 1 followed procedural requirements by setting the appearance date far enough ahead to allow for correction of any errors that could cause delay. Immediately upon notification from the Courts that the California Vehicle Code section and description of the maneuver did not match, he issued a Notification of Correction. Deputy 1's actions were lawful, justified and proper.

4. False Reporting – Deputy 1 offered into traffic court evidence a scene sketch that was incorrect.

Recommended Finding: Not Sustained

Rationale: As in allegation number two, the parties disagree as to where the complainant's turning motion was conducted. No evidence was presented, nor did any emerge proving that Deputy 1's scene sketch was incorrectly drawn or falsely presented to court. There is again insufficient evidence to either prove or disprove the allegation.

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## **09-096**

1. False Arrest – Probation Officer 2 arrested the aggrieved on August 10, 2009.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Probation Officer 2 handcuffed the aggrieved outside his home, which alerted neighbors to his charges and caused them to threaten the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Supervising Probation Officer 1 defended her employee (PO 2) against Probation policy.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Discourtesy – Supervising Probation Officer 1 laughed at the aggrieved.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. False Arrest – Probation Officer 3 arrested the aggrieved on October 9, 2009.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **09-103**

1. Discrimination/Religious – Deputy 1 prohibited the complainant from attending Bible Study at SDCJ.

Recommended Finding: Action Justified

Rationale: As a Level 5, Protective Custody inmate, the complainant was in one of the highest risk classes at

San Diego Central Jail (SDCJ). He was placed in Protective Custody at his request, which required the initiation of additional safety protocols for his protection. Protective Custody involved separation from other inmates in several programs, including the facilities' worship services. Each Facility Commander has limited discretionary authority to assess specific risk factors and determine who is allowed to participate in their programs. Per SDCJ's policies and assessments, Deputy 1's actions were lawful, justified, and proper.

## **POLICY RECOMMENDATION**

It is recommended that the Sheriff's Department issue notice to corrections facility commanders to ensure compliance with San Diego County Sheriff's Department Detention Services Bureau – Manual of Policies and Procedures W-5 – Inmate Church Services. The notice should direct facility commanders to develop inmate sign-up procedures, criteria, and staff screening guidelines for inmates desiring to participate in church services.

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### **09-125**

1. Misconduct/Procedure – The Sheriff's Department Policy & Procedure differs from Penal Code provisions with regard to obtaining a license to carry a concealed weapon.

Recommended Finding: Summary Dismissal

Rationale: Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department. Carry Concealed Weapon (CCW) license applications are processed by the Department's licensing bureau, which is operated by professional staff and managed by a non-sworn professional staff manager, and as such, the Review Board lacks jurisdiction.

2. Misconduct/Procedure – The Sheriff's Department Policy & Procedure differs from Penal Code provisions concerning minimum firearms safety course requirements.

Recommended Finding: Summary Dismissal

Rationale: See Allegation #1.

3. Misconduct/Discourtesy – Unidentified deputies made “negative references to the complainant's appearance” at a CLERB Board meeting.

Recommended Finding: Summary Dismissal

Rationale: See Allegation #1.

4. Misconduct/Procedure - The Sheriff's Department denied the complainant's application for a CCW (concealed carrying of a weapon) license.

Recommended Finding: Summary Dismissal

Rationale: See Allegation #1.

5. Criminal Conduct – The Sheriff's Department's charges monies for CWW applications that are prohibited by law.

Recommended Finding: Summary Dismissal

Rationale: See Allegation #1.

## **POLICY RECOMMENDATION**

It is recommended that the Sheriff's Department review and update all procedures associated with the Standard Application for License to Carry a Concealed Weapon (CCW). Application requirements, denial procedures, and appeal

rights should be clearly identified, in conformance with *California Penal Code §12050-12054*, and relevant information considered for inclusion in the *San Diego County Code of Regulatory Ordinances, Chapter 1, Uniform Licensing Procedure*, and *The San Diego County Sheriff's Department Policies and Procedures Manual*.

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#### **10-004**

1. Misconduct/Procedure - Deputy 1 threw the complaint's property bags in the air to damage the contents of the bags.

Recommended Finding: Unfounded.

Rationale: There is no evidence that Deputy 1 or Deputy 2 mishandled the complainant's property causing it to be crushed or destroyed. There is no record of that the complaint submitted a Claim for Lost or Damaged Personal Property. The evidence shows the alleged act did not occur.

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#### **10-090**

1. Misconduct/Procedure – Officer 1 contacted the complainant for fog lights when no fog was present.

Recommended Finding: Summary Dismissal

Rationale: On September 17, 2010, the Grand Jury forwarded a signed complaint from Marcus Turner. The incident involved officers of the Oceanside Police Department over whom CLERB has no authority. The Review Board lacks jurisdiction based upon CLERB Rules and Regulations, 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department...

2. Illegal Search & Seizure – Officer 1 handcuffed and searched the complainant and subsequently his vehicle, after the complainant exercised his right to decline the Deputy's request for a search.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. False Arrest – Officer 1 arrested the complainant for being under the influence of a controlled substance.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. False Reporting – Officer 1 falsified his police report with regard to a turn signal violation.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Officer 2 failed to conduct a proper and/or thorough investigation into a complaint against Officer 1.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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